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7 **UNITED STATES BANKRUPTCY COURT**

8 **DISTRICT OF NEVADA**

10 In re:

11 SCHULTE PROPERTIES LLC,

13 Debtor.

12 Bankruptcy Case No. 18-12734-MKN

14 Chapter 11

15 Date: October 24, 2018

16 Time: 9:30 a.m.

17 **MOTION TO ASSUME LEASES BETWEEN SCHULTE PROPERTIES LLC AND**
RESIDENTIAL TENANTS

19 SCHULTE PROPERTIES LLC (the “Debtor”), by and through its counsel Johnson &
20 Gubler, PC, hereby files this Motion to Assume/Reject Leases Between Schulte Properties LLC and
21 Residential Tenants (the “Motion”) seeking an order authorizing Debtor to assume residential leases
22 between tenants (the “Tenants”) and the Debtor or Debtor’s successor(s).

23 **JURISDICTION AND VENUE**

24 This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This
25 matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper before this Court

1 pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory basis for the relief requested herein is Section
 2 365 of title 11 of the United States Code (the "Bankruptcy Code").

3 **FACTS**

4 1. This case was commenced on May 10, 2018 by a voluntary petition for relief under
 5 chapter 11 of title 11 of the United States Code. *See Declaration of Melani Schulte.*

6 2. Melani Schulte is the sole member of Schulte Properties LLC. *See Declaration of*
 7 *Melani Schulte.*

8 3. The Debtor remains in possession of its assets and the management of its property as
 9 debtor in possession under sections 1107 and 1108 of the Bankruptcy Code. *See Declaration of Melani*
 10 *Schulte.*

11 4. No trustee, examiner, or committee of unsecured creditors has been appointed by the
 12 Office of the United States Trustee in this case. *See Declaration of Melani Schulte.*

13 5. Debtor holds title to 32 residential properties (the "Properties"). *See Exhibit 1 to*
 14 *Declaration of Melani Schulte.*

15 6. The Properties were each transferred from their respective prior owners to Schulte
 16 Properties LLC, pursuant to the Order Confirming The Debtors' Chapter 11 Plan of Reorganization
 17 entered in Melani Schulte's personal bankruptcy proceeding, case 09-29123-MKN (the "2009
 18 Bankruptcy"). *See 2009 Bankruptcy, Doc 912.*

19 7. All of the 32 residential Properties Debtor holds are occupied by tenants that have
 20 entered into leases with either the Debtor, or with Melani Schulte or predecessor entities (collectively,
 21 the "Leases"). *See Declaration of Melani Schulte.*

22 8. 3 of the 32 residential Properties Debtor holds is occupied by tenants that entered into
 23 post-petition leases with the Debtor. *Declaration of Melani Schulte.*

24 9. 3 of the 32 residential Properties Debtor holds are occupied by tenants that entered into
 25 pre-petition leases with the Debtor. *Declaration of Melani Schulte.*

10. 26 of the 32 residential Properties Debtor holds are occupied by tenants that entered into pre-petition leases with Melani Schulte or predecessor entities. *Declaration of Melani Schulte.*

11. Details of the Properties and Leases are set forth more fully on Exhibit 1 to Declaration of Melani Schulte filed concurrently herewith. *See Declaration of Melani Schulte.*

12. A copy of each of the pre-petition Leases is available upon request, and has already been provided to the Office of the US Trustee. *See Declaration of Melani Schulte.*

13. The assumption of the Leases is in the best interest of the estate. *See Declaration of Melani Schulte.*

14. No prior motions for acceptance of any leases have been filed in this case. See *Declaration of Melani Schulte*.

15. No plan of reorganization has been filed in this case. *See Declaration of Melani Schulte.*

ARGUMENT

11 U.S.C. Section 365 governs the treatment of executory contracts and unexpired leases. Subject to bankruptcy court approval, a debtor-in-possession may assume or reject an executory contract or unexpired lease of the debtor. *See 11 U.S.C. § 365(a).*¹ Moreover, the trustee may assume or reject an unexpired lease of residential real property at any time before the confirmation of the plan. Section 365(d)(4) provides as follows:

(4)(d)(2) In a case under chapter 9, 11, 12, or 13 of this title, the trustee may assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor at any time before the confirmation of a plan but the court, on the request of any party to such contract or lease, may order the trustee to determine within a specified period of time whether to assume or reject such contract or lease.

See 11 U.S.C. § 365(d)(2). In this case, a plan has not yet been confirmed, and the Court has jurisdiction to approve the assumption of the Leases.

¹ While Section 365 refers to the rights and obligations of a bankruptcy trustee, a Chapter 11 debtor-in-possession has the same rights and obligations, with exceptions not applicable to this case, under Section 1107(a).

CONCLUSION

WHEREFORE, debtor prays for an order from the Court authorizing and approving the assumption of the Leases between Schulte Properties LLC and the Tenants, as being in the best interest of the estate.

DATED: September 19, 2018

JOHNSON & GUBLER, P.C.

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